

**UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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NATIONAL WILDLIFE FEDERATION,	)	
	)	No. 23-1249 (consolidated with
Petitioner,	)	23-1177, 23-1240, 23-1243,
v.	)	23-1244, 23-1245, 23-1246,
	)	23-1247, 23-1248)
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY, and	)	
MICHAEL S. REGAN, Administrator,	)	Non-Binding Statement of
United States Environmental Protection	)	Issues to Be Raised
Agency,	)	
	)	
Respondent.	)	
	)	

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**NON-BINDING STATEMENT OF ISSUES TO BE RAISED**

Pursuant to this Court’s Order of September 12, 2023, Petitioner National Wildlife Federation respectfully submits this non-binding Statement of Issues to be Raised.

This case involves a challenge to the final action of Respondent United States Environmental Protection Agency (“EPA”) entitled Renewable Fuel Standard (RFS) Program: Standards for 2023-2025 and Other Changes, 88 Fed. Reg. 44,468 (July 12, 2023) (to be codified at 40 C.F.R. pt. 80 & 1090). The Final Rule was published in the Federal Register on July 12, 2023. *See* 88 Fed. Reg. 44,468.

The issues to be raised include:

1. Whether EPA violated the Administrative Procedure Act, 5 U.S.C. § 706, when promulgating the Final Rule by failing to properly and adequately consider the climate impacts of the production of renewable biomass, particularly corn and soy, including from the continuing and prior land conversion and the effect on carbon storage and sequestration.

2. Whether EPA violated the Administrative Procedure Act, 5 U.S.C. § 706, and the Clean Air Act, 42 U.S.C. § 7545(o), when promulgating the Final Rule by disregarding its own analysis and model comparisons showing that conventional biofuels do not achieve mandated greenhouse gas reduction benefits, in direct contravention of the mandated minimum 20 percent reduction in lifecycle greenhouse gas emissions compared to baseline lifecycle greenhouse gas emissions, *see id.* § 7545(o)(2)(A)(i).

3. Whether EPA violated the Administrative Procedure Act, 5 U.S.C. § 706, when promulgating the Final Rule by failing to adequately consider the environmental and environmental justice harms that will result from the volumes set in the Rule.

4. Whether EPA violated the Administrative Procedure Act, 5 U.S.C. § 706, when promulgating the Final Rule by disregarding its own cost-benefit analysis that showed significant climate and financial costs to consumers on the one hand, and very little climate or environmental benefit (if any) on the other.

Respectfully submitted,

/s/Carrie Apfel

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*Counsel for Petitioner National Wildlife Federation*

**RULE 26.1 CORPORATE DISCLOSURE STATEMENT**

Pursuant to Fed. R. Civ. P. 26.1 and D.C. Cir. R. 26.1, Petitioner National Wildlife Federation respectfully submits their Corporate Disclosure Statement as follows:

1. National Wildlife Federation has no parent companies, and there are no companies that have a 10 percent or greater ownership interest in the corporation. National Wildlife Federation is a national non-profit corporation organized under the laws of the District of Columbia, and its mission is to unite all Americans to ensure wildlife thrive in a rapidly changing world.

Respectfully submitted,

/s/Carrie Apfel

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**CERTIFICATE OF SERVICE**

I hereby certify that on October 12, 2023, I filed a copy of the foregoing Non-Binding Statement of Issues to be Raised and Corporate Disclosure Statement using this Court's CM/ECF system, which will serve notice of the filing on all parties in this case.

Respectfully submitted,

/s/Carrie Apfel

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